

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

FUTUREWISE,

Petitioner,

v.

PACIFIC COUNTY,

Respondent,

And,

CITY OF LONG BEACH,

Intervenor.

CASE NO. 10-2-0021

FINAL DECISION AND ORDER

I. PROCEDURAL BACKGROUND

Petition for Review

On December 28, 2010, Futurewise (Petitioner) filed a timely Petition for Review with the Board.¹ An Amended PFR was filed the same day. The Amended PFR (PFR) challenges Pacific County's adoption of Resolution No. 2010-036 which amended the County's Comprehensive Plan. Petitioner alleges this update failed to review and revise the County's Comprehensive Plan and development regulations to: include and properly designate and conserve agricultural lands of long-term commercial significance; properly size its urban

¹ RCW 36.70A.290(2) requires a PFR to be filed within 60 days of publication of the challenged action. Resolution 2010-036, which is the subject of these proceedings, was adopted on October 26, 2010. Futurewise's PFR does not denote the date of publication but no challenge was raised as to the timeliness of the PFR based on Resolution 2010-036's publication date.

1 growth areas; and properly designate its Limited Areas of More Intensive Rural
2 Development on the Long Beach Peninsula.

3
4 *Motions*

5 On February 15, 2011 the Board granted intervention to the City of Long Beach.

6 On March 22, 2011 the Board denied the County's motion to dismiss Issues 1 and 3, and,
7 as well, denied the City of Long Beach's motion to dismiss those portions of the PFR
8 relating to the North Urban Growth Area.
9

10 *Hearing on the Merits*

11 The Hearing on the Merits was held on May 17, 2011, in South Bend, Washington. Board
12 members Nina Carter, William Roehl and James McNamara, were present; Board Member
13 McNamara presiding. Petitioner was represented by Tim Trohimovich; Pacific County was
14 represented by David Burke; Intervenor City of Long Beach did not appear at the hearing.
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17 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,**
18 **AND STANDARD OF REVIEW**

19 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and
20 amendments to them, are presumed valid upon adoption.² This presumption creates a high
21 threshold for challengers as the burden is on Futurewise to demonstrate that any action
22 taken by Pacific County is not in compliance with the GMA.³
23

24 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
25 noncompliant plans and development regulations.⁴ The scope of the Board's review is
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29 ² RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
30 development regulations] comprehensive plans and development regulations, and amendments thereto,
31 adopted under this chapter are presumed valid upon adoption.

32 ³ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter.

⁴ RCW 36.70A.280, RCW 36.70A.302

1 limited to determining whether Pacific County has achieved compliance with the GMA only
2 with respect to those issues presented in a timely petition for review.⁵ The GMA directs that
3 the Board, after full consideration of the petition, shall determine whether there is
4 compliance with the requirements of the GMA.⁶ The Board shall find compliance unless it
5 determines that Pacific County's action is clearly erroneous in view of the entire record
6 before the Board and in light of the goals and requirements of the GMA.⁷ In order to find
7 Pacific County's action clearly erroneous, the Board must be "left with the firm and definite
8 conviction that a mistake has been committed."⁸
9

10
11 In reviewing the planning decisions of cities and counties, the Board is instructed to
12 recognize "the broad range of discretion that may be exercised by counties and cities" and
13 to "grant deference to counties and cities in how they plan for growth."⁹ However, Pacific
14 County's actions are not boundless; their actions must be consistent with the goals and
15 requirements of the GMA.¹⁰
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20 ⁵ RCW 36.70A.290(1)

21 ⁶ RCW 36.70A.320(3)

22 ⁷ RCW 36.70A.320(3)

23 ⁸ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing *Dept. of Ecology v. PUD*
24 *District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al*
25 *v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,
26 497-98, 139 P.3d 1096 (2006).

27 ⁹ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be
28 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
29 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
30 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
31 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
32 while this chapter requires local planning to take place within a framework of state goals and requirements, the
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community.

¹⁰ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and
capricious standard. *Id.* at 435, Fn.8.

1 Thus, the burden is on Futurewise to overcome the presumption of validity and demonstrate
2 that the challenged action taken by Pacific County is clearly erroneous in light of the goals
3 and requirements of the GMA.

4 5 **III. BOARD JURISDICTION**

6 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2).
7 The Board finds the Petitioner has standing to appear before the Board, pursuant to RCW
8 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the petition
9 pursuant to RCW 36.70A.280(1).
10

11 **IV. ISSUES AND DISCUSSION**

12
13 The Futurewise PFR challenges the October 26, 2010 adoption of Resolution 2010-036.
14 With this Resolution, Pacific County adopted its 2010 Comprehensive Plan pursuant to
15 RCW 36.70A.130's mandate that the County conduct a periodic update of its
16 comprehensive plan to ensure compliance with the requirements of the GMA. The County's
17 update primarily included "updating statistics, facts, figures, and tracking the most recent
18 census & OFM data trends"¹¹ but the update also addressed Agricultural Lands, LAMIRDs,
19 and Urban Growth Areas which serve as the foundation for Futurewise's issues.¹²
20

21
22 As noted *supra*, the City of Long Beach was granted intervention in this matter. Although
23 Long Beach did file a dispositive motion during the motions phase,¹³ it did not file a brief nor
24 appear at the hearing on the merits. Therefore, the Presiding Officer concluded Long Beach
25 has withdrawn from the matter.
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29 ¹¹ Resolution 2010-036, Finding of Fact No. 12

30 ¹² See e.g., Resolution 2010-036 – Agricultural Lands (Findings of Fact Nos. 97-100, No. 113); LAMIRDs
31 (Findings of Fact Nos. 28-30, Nos. 32-33, No. 61, Nos. 65-66, No. 74); UGAs (Findings of Fact Nos. 38-50,
32 Nos. 75-78).

¹³ Long Beach's Dispositive Motion, filed February 28, 2011, was denied by the Board in its March 22, 2011
Order on Dispositive Motions.

1 Although the Board finds its has jurisdiction over the general subject matter of the PFR
2 pursuant to RCW 36.70A.280(1), a preliminary question affects the scope of the Board's
3 jurisdiction as to the three issues presented in this case based on the County's action in
4 adopting a new Comprehensive Plan.

5
6 Futurewise has taken the position that, because the County adopted the amendments to its
7 Comprehensive Plan by repealing and replacing the prior Plan in its entirety,¹⁴ all aspects of
8 the newly adopted plan are subject to challenge. The County, in arguments at the HOM,
9 states this would be elevating form over substance, as the revisions adopted by Resolution
10 No. 2010-036 are relatively few in number and a new Plan was adopted for purposes of
11 administrative efficiency.

12
13 The Board agrees with the County's position in this regard. A review of Resolution No. 2010-
14 036 makes it clear that it was intended, and served, as the County's mandated
15 Comprehensive Plan update as required by RCW 36.70A.130.¹⁵ Our State Supreme Court
16 has held that a party may challenge a county's failure to revise a comprehensive plan with
17 respect to those provisions that are directly affected by new or recently amended GMA
18 provisions.¹⁶ In addition, of course, a party may challenge amendments to the Plan and
19 Development Regulations actually made during a RCW 36.70A.130 update, pursuant to
20 RCW 36.70A.290. But an annual update "creates no 'open season' for challenges
21 previously decided or time-barred."¹⁷ Therefore, the scope of permissible challenges in this
22 appeal is limited to those areas amended by the County or affected by new or recently
23 amended GMA provisions.
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27 **A. Agricultural Lands**

28
29 ¹⁴ See Resolution 2010-036 at 2: *IT IS FURTHER RESOLVED that the Board of Pacific County*
30 *Commissioners rescinds the following conflicting resolutions, plans and/or studies: 1998 Pacific County*
31 *Comprehensive Plan - Resolution 98-089.*

32 ¹⁵ Resolution No. 2010-036, Finding of Fact No. 2.

¹⁶ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 344 (2008).

¹⁷ *Id.*, citing *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn.App. 378, 390 (2007).

1 *Issue 1: Does Pacific County under its updated comprehensive plan fail to include and*
2 *properly designate agricultural lands that have long-term significance for the commercial*
3 *production of food or other agricultural products as required under RCW 36.70A.170(1)(a)?*

4
5 Applicable Law

6 RCW 36.70A.170(1) a) provides:

- 7 • On or before September 1, 1991, each county, and each city, shall designate
8 where appropriate:

9 (a) Agricultural lands that are not already characterized by urban growth and
10 that have long-term significance for the commercial production of food or other
11 agricultural products;

12 Board Discussion and Analysis

- 13 • Jurisdiction

14
15 Pacific County's February 28 Motion to Dismiss asserted the Board lacked jurisdiction to
16 rule on this issue based on *Thurston County v. WWGMHB*. In its March 22 Order on
17 Motions, the Board reserved consideration of this jurisdictional issue until the HOM.¹⁸

18
19 Futurewise argues the Board has jurisdiction in this appeal because the County extensively
20 amended Section 3.5, Agricultural Resources, when it adopted the Resolution.¹⁹ It points to
21 new material added to Section 3.5.2 on Identifying and Classifying Agricultural Lands as well
22 as to Sections 3.5.1 and 3.5.3 Maps and References.

23
24 In response to this argument, the County asserts the Board is without jurisdiction over this
25 issue because the Resolution did not alter any "substantive provisions pertaining to how
26 Pacific County handles agricultural issues".²⁰ The County states it has not amended its
27 designation of, or policies and regulatory standards pertaining to, Agricultural Lands of Long
28 Term Commercial Significance (ALLTCS) after the initial adoption of Pacific County
29

30
31 _____
32 ¹⁸ March 22, 2011 Order on Motions at 3

¹⁹ Futurewise Opening Brief at 9.

²⁰ County Brief at 6.

1 Ordinance No. 147 in 1987, and the adoption of the initial GMA Pacific County
2 Comprehensive Plan in 1998.²¹ Further, the County states there have not been any
3 legislative changes fundamentally altering the criteria for the designation of ALLTCS since
4 they were initially designated by Pacific County. Consequently, the County asserts it has not
5 “opened the door” to allow Petitioner to challenge the designation process for ALLTCS.
6

7 As noted above, while a RCW 36.70A.130 Plan revision does not create an open season on
8 unamended provisions, or those unaffected by legislative changes, the Board clearly has
9 jurisdiction over amendments the County chose to make on its own initiative. Further, the
10 County misreads *Thurston County* in asserting that the Court held the Board’s jurisdiction is
11 limited to substantive changes in a Plan. In fact, the Court stated that “a party may
12 challenge a county’s failure to revise a comprehensive plan only with respect to those
13 provisions that are directly affected by new or recently amended GMA provisions, meaning
14 those provision related to mandatory elements of a comprehensive plan that have been
15 adopted or substantively amended since the previous comprehensive plan was adopted . . .”
16

17 ²² The Court was clearly referring to substantive amendments to the GMA, not to a
18 comprehensive plan. The County has not cited any authority that would restrict this Board’s
19 jurisdiction to review only “substantive” amendments of the Plan. Nothing in the plain
20 language of RCW 36.70A.290 so limits the Board’s jurisdiction.²³ Because there is no
21 dispute that Resolution 2010-036 made amendments to the County’s Comprehensive Plan,
22 the Board has jurisdiction to determine if those amendments are compliant with the GMA.
23 The issue of whether there have been substantive changes to the GMA with regard to
24 Agricultural Land of Long-Term Commercial Significance is a matter the Board considers
25 below.
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30 ²¹ County Brief at 7.

31 ²² *Thurston County v. WWGMHB*, 164 W.2d 329, 344 (2008).

32 ²³ RCW 36.70A.280 and .290 grants the Board jurisdiction over “amendments” to comprehensive plans. The Legislature did not include as a modifying adjective, nor will the Board read it into the GMA, the use of substantive.

1 The Board agrees with the County there have not been any legislative changes to the GMA
2 that have altered the criteria for designation of ALLTCS. The County identifies four areas
3 where the Legislature has amended the law since such lands were designated by the
4 County in 1998. As noted by the County, RCW 36.70A.177 was amended in 2004 with
5 regard to accessory uses, to add permissive language pertaining to agricultural zoning.²⁴
6 Another 2004 amendment²⁵ by its terms did not apply to Pacific County. Chapter 147 of
7 Washington Laws, 2006 amended RCW 36.70A.177 and allows for the permissive use of
8 certain innovative zoning techniques and certain accessory uses and activities. It did not
9 require the County to amend its Plan. Finally, Chapter 353 of Washington Laws, 2007
10 amended the GMA by placing a moratorium on amending or adopting critical areas
11 ordinances. No additional relevant legislative amendments pertaining to ALLTCS were
12 brought to the Board's attention by Futurewise in its Reply Brief. Thus, none of the
13 legislative amendments adopted since the County first designated ALLTCS would require
14 the County to amend its agricultural lands designations, or open that portion of its Plan to
15 challenge during the update process.
16

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19 • Application of Designation Criteria

20 Futurewise argues that, in making amendments to its Comprehensive Plan during the 2010
21 update, Pacific County made several changes that do not comply with the GMA. Futurewise
22 asserts the County committed clear error by giving agricultural lands a "Rural Agricultural"
23 designation rather than using an "agriculture" natural resource lands of long-term
24 commercial significance designation in its Comprehensive Plan land use map.²⁶
25

26 Next, Futurewise argues the County erred by failing to apply the new designation criteria to
27 designate agricultural lands of long term commercial significance "Agriculture" on the future
28
29
30

31 ²⁴ Chapter 207 of Washington Laws, 2004.

32 ²⁵ Chapter 209 of Washington Laws, 2004.

²⁶ Futurewise Opening Brief at 7 and 13-14.

1 land use map.²⁷ It states that the County has failed to apply or map its agricultural lands,
2 following the adoption of new designation criteria.

3
4 The County disputes Futurewise's claim that it extensively amended its Comprehensive
5 Plan pertaining to agriculture. It notes that the listing of the requirements of RCW
6 36.70A.170 in Section 3.5.2 and the reference to WAC 365-190-050 were mere citations to
7 the relevant statutory and regulatory provisions pertaining to ALLTCS meant to help the
8 reader locate relevant information, not to open the process of reclassifying ALLTCS.²⁸ The
9 County states there is nothing in the record to suggest the County intended to change or
10 readdress its classification of these lands and that referring to the WAC was simply to help
11 readers locate relevant information; not that the WAC applied to the County's
12 comprehensive plan.²⁹

13
14
15 The County notes it did not field locate agricultural land because the County now has a
16 zoning map which identifies these areas, although it does not delineate nor specifically
17 identify areas that comprise ALLTCS. The County also notes properties designated
18 ALLTCS have never been delineated on maps because it is applicable to all land that is
19 devoted to the production of aquaculture, cranberries and/or other bog related products.
20 Thus, the County argues including a Rural Agricultural category in the land use element of
21 the Comprehensive Plan did not undercut ALLTCS which is a "stand alone" category in the
22 critical areas and resource lands element of the Comprehensive Plan.

23
24
25 The Board agrees with the County that there have been no changes in the Pacific County
26 Comprehensive Plan that adopt new classification criteria so as to open up the County's
27 agricultural lands designations to a challenge. At most, the amendments under appeal
28 recite the statutory requirements of RCW 36.70A.170 and *make reference* to WAC 365-190-
29

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31 _____
32 ²⁷ Futurewise Opening Brief at 18.

²⁸ County Brief at 8-9.

²⁹ Id.

1 050 which contains language pertaining to the designation of ALLTCS. Such references
2 cannot be read as adopting new designation standards.

3
4 As to the County's use of the "Rural Agriculture" comprehensive plan designation, it appears
5 Futurewise's objection is that the County thereby improperly included ALLTCS in the rural
6 element. In fact, it is clear that the term "Rural Agriculture" is not a designation exclusively
7 of ALLTCS but of all agricultural activities outside of urban areas. Instead ALLTCS is
8 contained in the Critical Areas and Resource Lands Element of the Pacific County
9 Comprehensive Plan.³⁰ There has been no showing of clear error in this regard.

10
11 As the Board has concluded the County has not adopted ALLTCS criteria, and that un-
12 amended portions of the Plan are not subject to challenge in this appeal, Futurewise's
13 assertion that the County erred by failing to map its ALLTCS is not timely. In addition,
14 Futurewise has failed to cite any authority for the proposition that the County was required to
15 map its ALLTCS. Thus, there is no basis for finding clear error.

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17
18 • *Section 3.5.2 and Lewis County v. WWGMHB*

19 Finally, Futurewise asserts Section 3.5.2 of the County Comprehensive Plan violates the
20 GMA. Section 3.5.2, "Identifying and Classifying Agriculture Lands", contains the County's
21 criteria for designating agricultural lands of long term commercial significance. It provides:

22
23 Section 17 of the GMA (RCW 36.70A.170) requires counties to identify
24 agricultural lands of long-term commercial significance. RCW 36.70A.030(2)
25 defines agricultural land as "land primarily devoted to the commercial production
26 of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal
27 products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to
28 the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland
29 hatcheries, or livestock, and that has long-term commercial significance for
30 agricultural production.

31
32 ³⁰ See Section 3.5 of the Pacific County Comprehensive Plan. Rural areas are addressed in Section 2.6.2

1 WAC 365-190-050 identifies a three part test for designating agricultural land of
2 long-term commercial significance. First, the land is not already characterized by
3 urban growth. **Second, the land is used or capable of being used for**
4 **agricultural production.**

5 **This factor evaluates whether lands are well suited to agricultural uses**
6 **based primarily on their physical and geographic characteristics.** (emphasis
7 added) Third, the land has long-term commercial significance for agriculture
8 based on several applicable criteria including the following:

- 9 • Classification of prime and unique soils as mapped by the Natural Resources
10 Conservation Services;
- 11 • Availability of public facilities, including roads;
- 12 • Tax status;
- 13 • Availability of public services;
- 14 • Relationship or proximity to urban growth areas and to markets and suppliers;
- 15 • Predominant parcel size;
- 16 • Land use settlement patterns and their compatibility with agricultural practices;
- 17 • Intensity of nearby land uses;
- 18 • History of land development permits issued nearby; and
- 19 • Land values under alternative uses.

20 Agricultural land in Pacific County is classified as: (1) “agricultural land of long
21 term commercial significance” which includes all land devoted to the production
22 of aquaculture, cranberries, and/or other bog related crops; and (2) “agricultural
23 land of local importance” which includes diked tidelands involved in existing and
24 ongoing agricultural activities as of the adoption date of Ordinance No. 147/147A
25 on April 13, 1999 and containing the soil types listed in Table 3-1 as defined in
26 the “Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum
27 County, Washington, 1986, Soil Conservation Service, USDA”.

28 Futurewise challenges the portion of this definition which provides:

29 “Second, the land is used or capable of being used for agricultural production.
30 This factor evaluates whether lands are well suited to agricultural uses based
31 primarily on their physical and geographic characteristics.”

32 Futurewise claims this language fails to contain a reference to the “commercial production
of agricultural products enumerated in RCW 36.70A.030(2)” – language contained in the
Supreme Court’s Lewis County decision’s three part test for designating agricultural land of
long term commercial significance. Futurewise contends that “The failure to use this

1 mandatory language is clearly erroneous”.³¹ However, nothing in the GMA mandates cities
2 and counties to use any “mandatory language”. Instead, jurisdictions are given a great deal
3 of flexibility in the means by which they choose to comply with the statute. The Board’s role
4 is not to look for the use of any so-called “mandatory language” within a comprehensive
5 plan. Instead, the relevant question is whether the language employed satisfies the
6 statutory requirement to identify ALLTCS. Futurewise fails to demonstrate the language in
7 Section 3.5.2 does not meet the requirements of the statute. Instead, the Board agrees with
8 the County that the challenged language is nothing more than a reference to a relevant
9 WAC provision, not the adoption of a new standard for designating ALLTCS.
10

11
12 Futurewise also asserts that if the Board concludes the last paragraph of Section 3.5.2,
13 “Identifying and Classifying Agriculture Lands”, is not a classification of part of the County’s
14 agricultural lands then this paragraph is clearly erroneous.³² Futurewise fails to explain why
15 that would be so and the Board does not find clear error in this regard.
16

17 Futurewise argues that in attempting to incorporate updates to the definition of agricultural
18 land into its comprehensive plan it failed to list all the agricultural products enumerated in
19 RCW 36.70A.030(2) including Christmas trees, dairy, hay or animal products³³. However, in
20 1996 – 1997 the County went through the process of analyzing what agricultural activities
21 were viable in Pacific County. In doing so it considered a variety of factors in determining
22 what agricultural land was of long-term commercial significance including soil type,
23 availability of public facilities, tax status, availability of public services, relationship of
24 proximity to urban growth areas, predominant parcel size, land use settlement patterns and
25 their compatibility with agricultural practices, intensity of nearby land uses, history of land
26 development permits issued nearby, land values under alternative use, and proximity of
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31 Futurewise Opening Brief at 20.

32 Futurewise Opening Brief at 21.

33 Futurewise Opening Brief at 21.

1 markets.³⁴ After extensive debate, the County determined that aquaculture and cranberry
2 production were the only agricultural activities that have long-term commercial significance.
3 While the County could have made a formal finding that ALLTCS pertains to land that is not
4 already characterized by urban growth, this “oversight” does not constitute error because
5 cranberry bogs and commercial shellfish beds are not found in urban areas.
6

7 Conclusion

8 The Board concludes Petitioner has failed to carry its burden of proof in demonstrating the
9 County’s action in the adoption of Resolution 2010-036 violated RCW 36.70A.170(1)(a).
10

11 **B. Urban Growth Areas**

12
13 Issue 2: Did Pacific County fail to review and revise its updated comprehensive plan to
14 properly size all of its urban growth areas as required by RCW 36.70A.110, RCW
15 36.70A.115, and RCW 36.70A.130?

16 Board Discussion and Analysis

17 • Jurisdiction as to UGAs

18
19 Futurewise notes the Washington State Supreme Court held that if the urban growth
20 projection for a county changes, a county must revise its comprehensive plan to reflect this
21 fact. And, if it fails to do so, a challenge to whether the UGA is appropriately sized based on
22 these projections can be raised.³⁵ Futurewise further points out there have been two new
23 OFM population projections since the 1998 Pacific County Comprehensive Plan was
24 adopted; one in 2002 and another in 2007.³⁶ Futurewise thus asserts that the sizing of the
25 County’s UGAs are therefore open to challenge in this appeal.³⁷
26
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29 ³⁴ County Brief at 16-17.

30 ³⁵ Futurewise Brief at 23-24 (citing *Thurston County v. WWGMHB*, 164 Wn.2d 329, 347 (2008))

31 ³⁶ OFM actually produces population projections every year, issuing them as of April 1. However, it only
32 produces the 20-year growth projections that serve as the foundation for UGAs every five years. RCW
43.62.035.

³⁷ Futurewise Brief at 24-25 (citing OFM Projections for Pacific County).

1 In response, the County points out that all of the 2002 and 2007 projections for 2025 (low,
2 medium, or high) on average vary by about one tenth of one percent, and are close to a “flat
3 line” in terms of population growth projections.³⁸ Consequently, the County asserts under
4 *Thurston County* a challenge to its UGAs is permissible only if the population projection has
5 changed. It states the County’s population projection has not changed given this “flat line”
6 growth which shows no meaningful difference.³⁹

8 As acknowledged by both parties, the Supreme Court has held:

9
10 A party may *challenge a county's failure to revise its UGA designations* during a
11 10 year update *only if there is a different OFM population projection for the*
12 *county ... If the urban growth projection changes, a county must revise its*
13 *comprehensive plan.* If the county fails to revise its plan, a party may challenge
14 whether the UGA accommodates the most recent OFM population projection.⁴⁰

15 It is clear from the text of Resolution 2010-036 that the County was conducting not only a
16 RCW 36.70A.130 periodic update but also a review of its UGAs.⁴¹ The County’s adopted
17 Findings of Fact indicate that it sought to justify the size of certain UGAs during the update
18 process which was to encompass the 2010-2030 planning horizon. Finding of Fact No. 39
19 recites, in relevant part:

20 Pacific County has completed the mandatory 10 year evaluation of the Urban
21 Growth Areas as required by RCW 36.70A.130(3) ... The four UGAs [Ilwaco,
22 Long Beach, Raymond, and South Bend] are adequately sized to accommodate
23 the future growth over the next 20 years.

24 Further Findings of Fact were adopted in support of these UGAs: Ilwaco (Finding No. 75);
25 Long Beach (Finding No. 76); Raymond (Finding No. 77); and South Bend (Finding No. 78).
26 *In addition, Findings of Fact Nos. 40 through 50 seek to lay the factual support for the*
27 *Seaview UGA expansion.* Thus, Pacific County’s UGAs were clearly under review.

30
31 ³⁸ County Brief at 19

32 ³⁹ County Brief at 19

⁴⁰ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 347 (2008)[Emphasis added, Internal citations omitted].

⁴¹ Resolution 2010-036 at 1

1 The question, at least as posed by the County, is - was there a "different OFM population
2 projection"? It is undisputed that OFM issued GMA population projections in 2002 and 2007
3 and that these projections were not mirror images of each other. It is undeniable that the
4 1998 Comprehensive Plan designated UGAs based on a planning horizon ending in 2016
5 and an expected population of 27,107.⁴² It is also undeniable that the County's 2010 Land
6 Capacity Analysis, which serves as the foundation for the present UGA sizing, states that
7 the County developed projections so as to establish a 2030 population projection of
8 26,770.⁴³ In addition, Table 2-8 *Residential Lands Needs* in the County's 2010
9 Comprehensive Plan bases its figures of "Projected New Residents" from which it calculated
10 "Land Area Needed" on the difference between projected population in year 2010 and 2030
11 population.⁴⁴ In short, the County cannot be heard to argue that its UGA sizing decisions
12 cannot be challenged where it is evident that it has based those decisions on new
13 population projections. Having determined that the County's UGAs are subject to challenge,
14 the Board turns now to a determination of whether those UGAs are oversized.
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18 • UGA Sizing

19 OFM issued a new urban growth projection for the year 2030 planning horizon in 2007. The
20 2007 OFM Projections set forth the following for Pacific County:⁴⁵

21
22

Low Series Projection	Medium Series Projection	High Series Projection
19,906	22,985	28,043

23
24

25 The Board notes, from the Land Capacity Analysis, the County did not utilize OFM's
26 projections. Rather, the County utilized population data obtained from the 2000 Federal
27 Census, adjusted those numbers based on site reconnaissance and discussions with county
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31 ⁴² County Exhibit 8, Page 2-32 – Table 2-7; Page 2-34 – Table 2-8

⁴³ Appendix A, Land Capacity Analysis of Comprehensive Plan

⁴⁴ See, Pacific County Comprehensive Plan, Table 2-8, footnote 1, page 2-45.

⁴⁵ Futurewise IR 20, OFM Forecasting Final Projections 2000-2030 (October 2007)

1 staff, then developed projections using a 1.4 percent growth rate based on April 1, 2009's
2 population estimates resulting in a 2030 population projection of 26,770.⁴⁶ Under the
3 discretion granted to it by the GMA, Pacific County is free to plan for population at any of
4 OFM's projected levels. In other words, Pacific County was free to plan for population
5 ranging from 19,906 to 28,043. The County's estimate of 26,770 clearly falls within that
6 range despite the fact its' origins were not in OFM's projections.
7

8 Collectively, Futurewise argues there is a need for 180 acres of land in the Ilwaco, Long
9 Beach, Raymond, Seaview and South Bend UGAs, yet there are 368 vacant buildable acres
10 in these UGAs, an excess supply of 104 percent.⁴⁷ Futurewise suggests that lands in excess
11 of the needed supply should be removed from the UGAs.
12

13
14 As to the size of the County UGAs, the County argues much of the land around the four
15 cities and the unincorporated community of Seaview is developmentally constrained by
16 wetlands, floodplains, steep slopes, dunes, or water.⁴⁸ Further, the County asserts the
17 historical community boundaries of these areas predate the GMA with little regard for a
18 "neat and tidy urban growth area."⁴⁹
19

20 Turning to the specifics of these communities, the **Ilwaco UGA** includes a large land area
21 devoted to a master planned community, and includes land areas for a future golf course,
22 future single and multi-family residential projects, commercial enterprises, and open space
23 areas. In addition, the Ilwaco UGA includes large tracts of undevelopable wetlands, steep
24 slopes, and floodplains that were included in the UGA to provide consistency with existing
25 service boundaries and to ease mapping administration.⁵⁰
26
27
28
29

30 ⁴⁶ Appendix A, Land Capacity Analysis of Comprehensive Plan

31 ⁴⁷ Futurewise Brief at 26.

32 ⁴⁸ County Brief at 19.

⁴⁹ County Brief at 19

⁵⁰ County Brief at 20.

1 The **Long Beach UGA** includes large wetland/upland areas the City of Long Beach intends
2 to include in their proposed trail network on the east side of town and, for purposes of grant
3 funding, needs to be included in the Long Beach UGA.⁵¹ In addition, this UGA includes
4 dunal areas tied to upland properties that are not available for development because they
5 are westerly of the City's Shoreline Master Program building setback line, but still associated
6 with upland building sites.⁵²

8 With regard to the **Raymond, South Bend, and Seaview UGAs**, the County points out that
9 the difference between the lands needed to accommodate the residential land needs of
10 future population growth and the lands actually available is quite small. In the case of
11 Raymond, the land needed is 70 acres, with 75 vacant buildable acres available. For South
12 Bend, it has identified a need for 40 acres, with 45 vacant buildable acres available. For
13 Seaview, the need is 20 acres, with 26 acres available.⁵³

16 The County contends the excess acreage within its UGAs allows for the "myriad of
17 development constraints that impact the amount of land that is truly available for
18 development" and, therefore, given this consideration the County's UGAs are not
19 oversized.⁵⁴

21 RCW 36.70A.110 requires counties to designate UGAs and RCW 36.70A.130 requires
22 UGAs to be reviewed at least every ten years.⁵⁵ The GMA further provides that UGAs "shall
23 be revised to accommodate the urban growth projected to occur in the county for the
24 succeeding twenty-year period."⁵⁶

29 ⁵¹ County Brief at 21.

30 ⁵² County Brief at 21

31 ⁵³ County Brief at 21 (Citing Table 2-8 at Page 2-45 of Exhibit 4 Pacific County Comprehensive Plan)

32 ⁵⁴ County Brief at 22

⁵⁵ RCW 36.70A.110(1); 36.70A.130(3)(a).

⁵⁶ RCW 36.70A.130(3)(b)

1 In sizing a UGA, our Supreme Court has held:⁵⁷

2 The size of a UGA must be “[b]ased upon” an OFM projection and a county must
3 include “areas and densities sufficient to permit the urban growth projected to
4 occur over the next 20 years. RCW 36.70A.110(2). While the statute explicitly
5 states the UGA must be large enough to accommodate the projected population
6 increase, it does not specifically state the projected population limits the amount
7 of land that may be designated as urban. In *Diehl*, the Court of Appeals held an
8 OFM projection constitutes both the minimum and maximum size of a UGA. 94
9 Wn. App. at 653. The court reasoned that although the GMA does not explicitly
10 restrict the size of a UGA, “[o]ne of the goals of the GMA is to ‘[r]educe the
11 inappropriate conversion of undeveloped land into sprawling, low-density
12 development.’” *Id.* (second alteration in original) (quoting RCW 36.70A.020(2)). If
13 the size of a UGA is not limited, rural sprawl could abound. *Id.* Thus, although
14 the GMA does not explicitly limit the size of a UGA, to give meaning to the
15 market supply factor provision and in light of the GMA goal of reducing sprawl,
16 we hold **a county's UGA designation cannot exceed the amount of land
17 necessary to accommodate the urban growth projected by OFM, plus a
18 reasonable land market supply factor.**

16 Thus, two things come into play when sizing a UGA – OFM projected growth and a
17 reasonable land market supply factor. Futurewise does not challenge the reasonableness of
18 the County’s market factor⁵⁸ rather it contends the UGAs originally delineated in 1998 are
19 now oversized due to the current population projections and cannot be justified by such
20 things as municipal water service or development limitations, such as critical areas, which
21 have already been accounted for in the calculation process.⁵⁹

28
29 ⁵⁷ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351-52 [Emphasis Added]

30 ⁵⁸ According to the County’s Land Capacity Analysis (Appendix A, 2010 Comprehensive Plan), Pacific County
31 used a 25 percent market factor for both the incorporated and unincorporated portions of the Ilwaco, Long
32 Beach, Raymond, and South Bend UGAs. For the Seaview UGA, the County does not expressly reference a
market factor but does reduce available land by 123 acres (or 30 percent) which it states represents “not for
sale during plan period, critical areas, and physically limited land.”

⁵⁹ Futurewise Brief at 26-27; Futurewise Reply Brief at 13-14

Looking at the County's Land Capacity Analysis for its UGAs, the Board finds Pacific County used the following reductions when developing available acreage amounts:⁶⁰

	Ilwaco	Long Beach	Raymond	South Bend	Seaview
Land Unavailable due to Wetlands/ Slopes	20%/20%	25%/48% ⁶¹	40%/25% ⁶²	0%/25% ⁶³	--
Land Unavailable due to Parks, Roads	20%/25%	22%/25%	20%/20%	15%/20%	15%
Market Unavailability	25%/25%	25%/25%	25%/25%	25%/25%	30% ⁶⁴

It is entirely appropriate for Pacific County to take these reductions as this has been the methodology promoted by the Department of Commerce and endorsed in Board decisions.⁶⁵

It is also clear from these numbers that the County's LCA took into consideration circumstances unique to each of these communities as the reduction percentage varies. However, once these reductions have been applied Pacific County cannot attempt to justify excessive acreage utilizing the same factors; it cannot reduce its acreage once by the Land Capacity Analysis and then again by claiming some land is not usable due to local circumstances. This amounts to a "double counting" for which the Board has previously found non-compliant with the GMA's mandates.⁶⁶

The Board acknowledges the competing concerns that must be addressed in sizing a UGA: if the UGA is too large it encourages sprawl, yet if it is too small this can drive up land prices

⁶⁰ Based on Appendix A, Land Capacity Analysis – 2010 Comprehensive Plan. First number represents the reduction applied within the incorporated area of the UGA. Second number represents the reduction applied within the unincorporated area of the UGA.

⁶¹ Reduction for Wetlands Only.

⁶² Reduction for Slopes.

⁶³ For City of South Bend, denotes that critical areas already excluded from vacant lands

⁶⁴ Represents land not for sale during plan period, critical areas, and physically limited land – the Land Capacity Analysis does not distinguish between percentage amounts.

⁶⁵ See Commerce's *Issues in Designated Urban Growth Areas: Part 1 Providing Adequate Urban Land Supply, Art & Science in Designation of Urban Growth Areas* (1992); *Caitac, et al v. Whatcom County*, WWGMHB Case 08-2-0021c, FDO at 29 (October 13, 2008); *Zillah v. Yakima County*, EWGMHB Case 08-1-0001, FDO at 25 (Aug. 10, 2009).

⁶⁶ *Panesko, et al v. Lewis County*, WWGMHB Case 08-2-0007c, FDO (Aug. 15, 2008)

1 and force development away from urban areas, in contravention of GMA's goals to
2 encourage compact urban growth. The UGA sizing process is not an exact science and
3 requires that assumptions be made regarding future development patterns. Because of this,
4 and because the calculations of land capacity do not always conform perfectly with existing
5 local circumstances, the Legislature has granted local governments discretion in making
6 such decisions:
7

8 "Cities and counties have discretion in their comprehensive plans to make many
9 choices about accommodating growth." RCW 36.70A.110(2)

10 This Board previously held that the market supply factor is designed to account for land
11 unavailable due to the nature of the land and its devotion to public uses, and that a further
12 reduction for "market unavailability" amounts to a double counting of the market supply
13 factor.
14

15 As we held in *Stalheim v. Whatcom County*:

17 "The County's error in this case is not that it cannot rely on "local circumstances"
18 but that it failed to recognize that by employing the use of a market supply factor
19 in its land capacity analysis it has already accounted for local circumstances.
20 *Thurston County* cannot be read to allow the "double counting" that would result
21 from sizing a UGA based upon considerations of both a market supply factor and
22 "local circumstances". In *Thurston County*, the State Supreme Court noted that a
23 market factor represents the estimated percentage of net developable acres
24 contained within a UGA that, due to idiosyncratic market forces, is likely to
25 remain undeveloped over the course of the twenty-year planning cycle.⁶⁷ That a
26 county may not rely upon *both* a market supply factor and "local circumstances"
27 can be seen in the Court's discussion of how a Growth Management Hearings
28 Board should scrutinize the use of the market supply factor. First, the Court held
29 that:

30 [I]n determining whether a market supply factor is reasonable, a
31 board must recognize counties have great discretion in making choices
32 about accommodating growth and the land market supply factor may be
based on local circumstances.⁶⁸

67 *Thurston County v. WWGMHB*, 164 Wn.2d 329, 352 (2008)

68 *Id.* at 353.

The Court continued:

If the Board finds that a land market supply factor was not used, the Board must determine whether the UGA designations were clearly erroneous after taking into account local circumstances and deferring to the County's discretion in making choices to accommodate future growth.⁶⁹

Pacific County developed a summary of its UGA analysis which is telling. Table A-10 of the Land Capacity Analysis shows the total land needed versus the total vacant, buildable land and from which the Board develops the following:⁷⁰

Location	Land Area Needed (Acres) ⁷¹	Vacant Buildable Land in City (Acres) ⁷²	Vacant Buildable Land in UGA (Acres) ⁷³	Total Vacant Buildable Land – City + UGA (Acres)	Land in Excess of Need(Acres)
Ilwaco	18	149	150	249	231
Long Beach	32	77	66	143	111
Raymond	70	75	98	173	103
South Bend	40	18	74	92	52

The information on this table demonstrates, except for South Bend, there is enough vacant, buildable land within the municipal boundary of each City alone to accommodate future growth. The GMA requires lands within the municipal boundaries of a city to be a UGA⁷⁴ so the incorporated portion of these UGAs cannot be reduced without a correlating de-

⁶⁹ Id.

⁷⁰ Appendix A of 2010 Comprehensive Plan. Footnote references are Board's.

⁷¹ Based on average household size of 2.27 person/household

⁷² Acreage has already been reduced by critical areas (e.g. wetlands (coastal and inland), slopes, dunes), public uses (e.g. roads/parks), and a market factor.

⁷³ Acreage has already been reduced by critical areas (e.g. wetlands (coastal and inland), slopes, dunes), public uses (e.g. roads/parks), and a market factor.

⁷⁴ RCW 36.70A.110(1)

1 annexation. However, the land within the unincorporated UGA is available for reduction and
2 Pacific County has provided no rational basis for UGAs of this size.

3
4 Conclusion

5 The Board concludes that Petitioner has carried its burden in demonstrating the County's
6 action in the adoption of Resolution 2010-036 violated RCW 36.70A.110 and RCW
7 36.70A.130 in sizing its UGAs.

8
9 **C. LAMIRDs**

10 Issue 3: Did Pacific County fail to review and revise its updated comprehensive plan to
11 properly designate its Limited Areas of More Intensive Rural Development (LAMIRDs) on
12 the Long Beach Peninsula including areas designated as Shoreline Development, as
13 required by RCW 36.70A.070(5)(d) and RCW 36.70A.130?

14 Applicable Law

15 RCW 36.70A.070

16 Each comprehensive plan shall include a plan, scheme, or design for each of the following:

17 ***

18
19 (5) Rural element. Counties shall include a rural element including lands that are not
20 designated for urban growth, agriculture, forest, or mineral resources. The following
21 provisions shall apply to the rural element:

22 ***

23
24 (d) Limited areas of more intensive rural development. Subject to the requirements of this
25 subsection and except as otherwise specifically provided in this subsection (5)(d), the rural
26 element may allow for limited areas of more intensive rural development, including
27 necessary public facilities and public services to serve the limited area as follows:

28 (i) Rural development consisting of the infill, development, or redevelopment of existing
29 commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline
30 development, villages, hamlets, rural activity centers, or crossroads developments.

1 Board Discussion and Analysis

2 With its February 28 Motion to Dismiss, Pacific County asserted the Board lacked
3 jurisdiction to rule on this issue based on *Thurston County v. WWGMHB*. In its March 22
4 Order on Motions, the Board reserved consideration of this jurisdictional issue until the
5 HOM.⁷⁵
6

7 Futurewise points out there have been substantial amendments to the GMA provisions
8 regarding LAMIRDs since the 1998 adoption of the Pacific County Comprehensive Plan.⁷⁶
9 In particular, Futurewise points to the changes made in 2003 and 2004.⁷⁷ In 2003,
10 Futurewise states that RCW 36.70A.070 (5)(d)(i) was amended regarding provisions for
11 Type I LAMIRDs so as to provide that an industrial use within a mixed use area or an
12 industrial area is not required to be principally designed to serve the existing and projected
13 rural population.⁷⁸ In 2004, Futurewise notes, this same provision was amended again so
14 that industrial areas were not required to be principally designed to serve the existing and
15 projected rural population and that development and redevelopment shall be consistent with
16 the character of the existing areas.⁷⁹ Futurewise contends the 2005 (*sic*) amendments make
17 it clear that other forms of development/redevelopment are to be principally designed to
18 serve the rural population and also limited size, scale, use, and intensity so as to be
19 consistent with existing character. Thus, due to intervening changes in the GMA's LAMIRD
20 provisions since the County's last plan update, Futurewise argues the Board has jurisdiction
21 to review the County's LAMIRDs.
22
23
24

25 Futurewise asserts the County's Long Beach LAMIRD violates GMA in three ways. First,
26 Futurewise argues that provisions of the County Comprehensive Plan at page 2-38 and 2-29
27
28
29

30 ⁷⁵ March 22, 2011 Order on Motions at 3-4

31 ⁷⁶ Futurewise Brief at 27.

32 ⁷⁷ Futurewise Brief, at 27-28

⁷⁸ Futurewise Brief at 27-28 (Citing to 2003 c 152 §1)

⁷⁹ Futurewise Brief at 28 (Citing to 2004 c 196 §1)

1 referring to the sizing of LAMIRDs to accommodate 20 years of growth violate RCW
2 36.70A.070(5)(d) because LAMIRDs are not to be sized for future residential growth.

3
4 Second, Futurewise asserts the County has not established a Logical Outer Boundary
5 (LOB) for the "Shoreline Development" Comprehensive Plan designation. Futurewise notes
6 this designation is defined as a LAMIRD by the definition of "areas of more intensive
7 development" but the zone is not mapped.⁸⁰

8
9 Finally, Futurewise argues the Shoreline Development designation has been applied to
10 areas that include vast amounts of undeveloped land.⁸¹

11
12 In response, the County first asserts the Board lacks jurisdiction over Issue 3. The County
13 points out the Ocean Park Rural Village, Klipsan Crossing Community Crossroad and
14 Surfside Community Crossroad LAMIRDs have remained unchanged since they were
15 adopted in 1998.⁸² The Nahcotta Rural Activity Center was adopted in 2002 and has
16 remained unchanged since its initial adoption. The County points out there have been no
17 changes to the criteria for designation of LAMIRDs since they were initially designated.

18
19
20 The County also notes there is no statutory mandate to designate specific rural land, such
21 as those areas designated Shoreline Development, as a LAMIRD. It points out that while
22 there is an area on the Long Beach Peninsula that was designated as Rural Shoreline
23 Development in its 1998 Comprehensive Plan, this area was not designated as a LAMIRD
24 and its boundaries and allowed uses have remained unchanged since.⁸³

25
26 The County also argues the fact that there have been changes in the GMA provisions
27 pertaining to LAMIRDs is not relevant in this appeal because those statutory amendments
28

29
30
31 ⁸⁰ Futurewise Brief at 31.

32 ⁸¹ Futurewise Brief at 31.

⁸² County Brief at 23.

⁸³ County Brief at 24-25.

1 address uses allowed in a LAMIRD. Issue 3, the County points out, does not challenge
2 allowable uses, but the designation of LAMIRDs.⁸⁴

3
4 Aside from the issue of Board jurisdiction, the County maintains that its LAMIRDs are
5 compliant with the GMA. It maintains that, contrary to Futurewise's assertion to the
6 contrary, it did not size its LAMIRDs for future residential growth, but instead identified the
7 Logical Outer Boundary (LOB) based on the built environment.
8

9 With regard to the Shoreline Development Comprehensive Plan designation, the County
10 states this area is not a LAMIRD, but an area of more intensive development that
11 recognized the existing residential and recreational development uses and platted lots along
12 the Pacific Ocean shoreline. It asserts that it is distinct from other LAMIRDs in the County
13 that are unique communities with distinct geographic boundaries. Instead, the County
14 asserts the Shoreline Development designation is a rural area that fits into the pastiche of
15 rural designations that vary from one dwelling unit per acre to one dwelling unit per 40
16 acres.⁸⁵
17
18

19 In the Board's March 22, 2011 Order on Dispositive Motions, we denied the County and
20 Long Beach's motion to dismiss Issue 3, holding:

21 It is not clear from the record presented by either the County or Futurewise
22 whether the County was obligated to revise its comprehensive plan to properly
23 "designate" previously established LAMIRDs during its ten year update.
24 Additional briefing for the Hearing on the Merits should clarify how the County's
25 comprehensive plan addresses LAMIRDs and whether recent changes in the
26 GMA relative to LAMIRDs would require a revision of those provisions. The
27 Board concludes that the County has not sufficiently demonstrated that a
28 challenge to the County's LAMIRD **designations**, during the County's ten year
29 update to its comprehensive plan, lies outside the scope of the Board's
30 jurisdiction.
31

32 ⁸⁴ County Brief at 25.

⁸⁵ County Brief at 29.

1 Having now had the benefit of full briefing on this issue, it is apparent that there have not
2 been any amendments to the GMA's provisions regarding LAMIRD designations that would
3 require the County to revise its LAMIRD designations. At most, since the County's last
4 comprehensive plan update, the intervening legislative amendments with regard to
5 LAMIRDs have pertained to the uses permitted within LAMIRDs. Issue 3 challenges the
6 County's LAMIRD designations, not the uses permitted within the LAMIRDs. Consistent
7 with our Supreme Court's decision in *Thurston County*, absent legislative changes to the
8 GMA's provisions regarding the designation of LAMIRDs, and absent any amendment by
9 the County to such provisions in its Comprehensive Plan, Futurewise may not subject the
10 County's LAMIRD designations to challenge.
11

12
13 Futurewise's challenge to the County's Shoreline Development Comprehensive Plan
14 designation fails for the additional reason that there has been no clear showing that this is a
15 LAMIRD designation. Clearly the County has never designated this as a LAMIRD. Instead
16 Futurewise rests its assertion that the Shoreline Development Comprehensive Plan
17 designation is a LAMIRD because it permits densities of one dwelling unit per acre, a
18 density Futurewise considers urban. Nothing else in the County Comprehensive Plan
19 suggests this is a LAMIRD designation. Instead, the County plan states this designation
20 applies to small lots that can be supported "without requiring urban service levels."⁸⁶
21 LAMIRDs, by definition may include necessary public facilities and public services. RCW
22 36.70A.070(5)(d). The Board concludes the Shoreline Development Comprehensive Plan
23 designation is not a LAMIRD, actual or *de facto*.
24
25

26 Finally, the Shoreline Development Comprehensive Plan designation was adopted by the
27 County in 1998.⁸⁷ While Futurewise asserts that recent amendments to the GMA pertaining
28 to LAMIRDs permit its challenge, this argument fails. Not only has Futurewise failed to
29 demonstrate that the Shoreline Development Comprehensive Plan designation is in fact a
30
31

32 ⁸⁶ Pacific County Comprehensive Plan, page 2-30, sec 2.6.2.4

⁸⁷ County Brief at 27.

LAMIRD, but it has not demonstrated that there have been any legislative amendments to the GMA, regarding LAMIRDs or otherwise, that would permit a challenge to this Plan designation.

Conclusion

The Board concludes that Petitioner has failed to carry its burden of proof in demonstrating the County's action in the adoption of Resolution 2010-036 violated RCW 36.70A.070(5)(d) and RCW 36.70A.130.

V. ORDER

Based upon the foregoing, the County is ordered to bring its Comprehensive Plan into compliance with the Growth Management Act pursuant to this decision within 180 days. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due on identified areas of noncompliance	December 19, 2011
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	January 2, 2012
Objections to a Finding of Compliance	January 16, 2012
Response to Objections	January 30, 2012
Compliance Hearing – (Telephonic) 360 407-3780 pin 433672#	February 7, 2012 10:00 a.m.

So ORDERED this 22nd day of June, 2011.

James McNamara, Board Member

William P. Roehl, Board Member

Nina Carter, Board Member

1 Pursuant to RCW 36.70A.300 this is a final order of the Board.⁸⁸

20
21 ⁸⁸ Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this
22 Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration,
23 together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise
24 delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy
25 served on all other parties of record. Filing means actual receipt of the document at the Board office.
26 RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a
27 prerequisite for filing a petition for judicial review.
28 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior
29 Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition
30 in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and
31 Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and
32 served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the
final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail,
but service on the Board means actual receipt of the document at the Board office within thirty days after
service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic
mail.
Service. This Order was served on you the day it was deposited in the United States mail. RCW
34.05.010(19)